IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Second Appeal No, 645/2001
(Old No. 1894/1989)

1. Smt. Chandra Pathak W/o late
   Madhvanand
2. Km. Deepa Pathak minor D/o late Madhvanand
3. Sanjay Pathak, minor S/o late Madhvanand
4. Km. Munni Pathak, minor D/o late Madhvanand
   all under the guardianship of late
   Madhvanand.
5. Keshav Dutt S/o Ganga Dutt,
   All R/o village Hairagajjar,
   Tehsil Haldwani,
   District Nainital .. Plaintiffs/appellants.

Versus

State of Uttar Pradesh through the
Collector Nainital .....Defendants/respondents.

Mr. Anirudha Bhatt, Advocate for the appellants.
Learned Standing Counsel for the State/respondent.

Hon'ble Mr. Justice B.C. Kandpal, J.:

This second appeal, U/S 100 C.P.C. has been preferred by the plaintiffs, against the judgment and decree dated 21-9-1988, passed by the Civil Judge, Nainital, in C.A. No. 11/1981, dismissed the appeal and confirming the judgment and decree dated 21-1-1981, passed by II Addl. Munsif Haldwani. District Nainital in O.S. 52 of 1977 Madhvanand and another vs. State of U.P. dismissing the suit of the plaintiffs.

2. Brief facts of the case are that the plaintiffs/appellants were in possession of land Khasra No. 174/1, measuring 6 Bighas and 10

Biswas, of village Heda Tehsil Haldwani, District Nainital, and they acquired the right over the said land and later-on became the Bhumidhar. On 1.7.1977 the plaintiffs came to know that the defendant State vide Notification No. 6223/14-B dated 17.11.65 declared the said land as reserved forest land, whereas the land was in possession of the plaintiffs and they were cultivating the said land. The land in accordance with the definition of U.P. Tenancy Act, the said land was the holding of the plaintiffs and the State has no right to declare the said land as reserved forest land. Therefore the plaintiffs/appellants filed a suit for permanent injunction before the Addl. Munsif, Haldwani.

3- The defendant/State filed W.S. and denied the claim of the plaintiffs. The defendant also alleged that the land in dispute was declared land of reserved forest in accordance with the provisions of relevant rules.

4- The trail court framed relevant issues in the suit. Thereafter, parties adduced evidence in support of their case. The trial Court after perusal of evidence and hearing learned counsel for the parties dismissed the suit.

5- Feeling aggrieved the plaintiffs preferred appeal before Civil Judge, Haldwani. The lower appellate court vide impugned judgment and decree dated 21-9-1988 dismissed the appeal and affirmed the judgment and decree passed by the trial court.

6- Thereafter, the plaintiffs/appellants preferred this second appeal before the Allahabad High Court,

which has been transferred to this court after creation of new State.

7- Heard learned counsel for the parties and perused the record.

8- Having considered the arguments advanced by the learned counsel for the appellant and after perusal of the evidence on record, I am of the view that this second appeal is concluded by concurrent finding of facts. Therefore, I do not find any ground to interfere in the impugned judgments and orders passed by the courts below. Both the courts below have recorded concurrent finding of facts, which cannot be interfered at the stage of second appeal. In also do not find any substantial question of law involved in this case.

9- The appeal is dismissed in limine.

(B.C. Kandpal, J.)

Dated: October 28, 2006

ISB